



# Administration of Justice Act 1985

## 1985 CHAPTER 61

### PART IV

#### THE SUPREME COURT AND COUNTY COURTS

##### *Proceedings relating to estates of deceased persons and trusts*

- 47 Power of High Court to make judgments binding on persons who are not parties**
- (1) This section applies to actions in the High Court relating to the estates of deceased persons or to trusts and falling within any description specified in rules of court.
  - (2) Rules of court may make provision for enabling any judgment given in an action to which this section applies to be made binding on persons who—
    - (a) are or may be affected by the judgment and would not otherwise be bound by it; but
    - (b) have in accordance with the rules been given notice of the action and of such matters connected with it as the rules may require.
  - (3) Different provision may be made under this section in relation to actions of different descriptions.
- 48 Power of High Court to authorise action to be taken in reliance on counsel's opinion**
- (1) Where—
    - (a) any question of construction has arisen out of the terms of a will or a trust; and
    - (b) an opinion in writing given by a barrister of at least ten years' standing has been obtained on that question by the personal representatives or trustees under the will or trust,the High Court may, on the application of the personal representatives or trustees and without hearing argument, make an order authorising those persons to take such steps in reliance on the said opinion as are specified in the order.

---

*Status: This is the original version (as it was originally enacted).*

---

- (2) The High Court shall not make an order under subsection (1) if it appears to the court that a dispute exists which would make it inappropriate for the court to make the order without hearing argument.

#### **49 Powers of High Court on compromise of probate action**

- (1) Where on a compromise of a probate action in the High Court—
- (a) the court is invited to pronounce for the validity of one or more wills, or against the validity of one or more wills, or for the validity of one or more wills and against the validity of one or more other wills; and
  - (b) the court is satisfied that consent to the making of the pronouncement or, as the case may be, each of the pronouncements in question has been given by or on behalf of every relevant beneficiary,
- the court may without more pronounce accordingly.

- (2) In this section—

" probate action " means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business; and

" relevant beneficiary ", in relation to a pronouncement relating to any will or wills of a deceased person, means—

- (a) a person who under any such will is beneficially interested in the deceased's estate ; and
- (b) where the effect of the pronouncement would be to cause the estate to devolve as on an intestacy (or partial intestacy), or to prevent it from so devolving, a person who under the law relating to intestacy is beneficially interested in the estate.

#### **50 Power of High Court to appoint substitute for, or to remove, personal representative**

- (1) Where an application relating to the estate of a deceased person is made to the High Court under this subsection by or on behalf of a personal representative of the deceased or a beneficiary of the estate, the court may in its discretion—
- (a) appoint a person (in this section called a substituted personal representative) to act as personal representative of the deceased in place of the existing personal representative or representatives of the deceased or any of them; or
  - (b) if there are two or more existing personal representatives of the deceased, terminate the appointment of one or more, but not all, of those persons.
- (2) Where the court appoints a person to act as a substituted personal representative of a deceased person, then—
- (a) if that person is appointed to act with an executor or executors the appointment shall (except for the purpose of including him in any chain of representation) constitute him executor of the deceased as from the date of the appointment; and
  - (b) in any other case the appointment shall constitute that person administrator of the deceased's estate as from the date of the appointment.

- (3) The court may authorise a person appointed as a substituted personal representative to charge remuneration for his services as such, on such terms (whether or not involving the submission of bills of charges for taxation by the court) as the court may think fit.
- (4) Where an application relating to the estate of a deceased person is made to the court under subsection (1), the court may if it thinks fit, proceed as if the application were, or included, an application for the appointment under the Judicial Trustees Act 1896 of a judicial trustee in relation to that estate.
- (5) In this section "beneficiary", in relation to the estate of a deceased person, means a person who under the will of the deceased or under the law relating to intestacy is beneficially interested in the estate.
- (6) In section 1 of the Judicial Trustees Act 1896, after subsection (6) there shall be added—
  - “(7) Where an application relating to the estate of a deceased person is made to the court under this section, the court may, if it thinks fit, proceed as if the application were, or included, an application under section 50 of the Administration of Justice Act 1985 (power of High Court to appoint substitute for, or to remove, personal representative).”

## **51 Amendments relating to jurisdiction of county courts and district probate registrars in probate proceedings**

- (1) For section 32 of the County Courts Act 1984 there shall be substituted—

### **“32 Contentious probate jurisdiction.**

- (1) Where—
  - (a) an application for the grant or revocation of probate or administration has been made through the principal registry of the Family Division or a district probate registry under section 105 of the Supreme Court Act 1981; and
  - (b) it is shown to the satisfaction of a county court that the value at the date of the death of the deceased of his net estate does not exceed the county court limit,the county court shall have the jurisdiction of the High Court in respect of any contentious matter arising in connection with the grant or revocation.
- (2) In subsection (1) "net estate", in relation to a deceased person, means the estate of that person exclusive of any property he was possessed of or entitled to as a trustee and not beneficially, and after making allowances for funeral expenses and for debts and liabilities.”

- (2) In section 106 of the Supreme Court Act 1981 (grants by district probate registrars), subsections (2) to (4) shall be omitted.